

(3) Surname and given name of authors, editors or compilers of supplement if different from that of the titled book;

(4) Coverage date or date of issuance for the supplement.

(b) On each replacement sheet, the month and year of issuance. [Guide 13]

§ 256.14 Upkeep service.²

Prior to the formation of any contract, or other agreement, whether written or oral, for the purchase of industry products containing provisions for subsequent automatic shipment of materials for upkeep purposes, the seller should:

(a) Clearly and conspicuously define the nature and extent of basic upkeep service. Basic upkeep service should include only those parts of upkeep which are absolutely essential and without which a set cannot remain functional (this might include such parts as pocket part supplements, replacement pages, releases and inserts, advance sheets, and replacement, revised, recompiled or split volumes); and

(b) Make available for purchase such basic upkeep service on an automatic shipment basis without requiring the purchase of other additional upkeep services whether on an automatic basis or otherwise.

²Upkeep service is also sometimes referred to as "Standing Order", "Continuations", "Subscription", or "Subscription Upkeep".

Once a customer invests in a work, his investment serves as a compelling factor in his decision of whether or not to continue future upkeep. Financial practicality and limited choices offered by sellers of particular types of works in a heavily concentrated industry tend to keep the buyer confined to the work in which he has already invested; therefore, the buyer will not or is reluctant to switch to a competitive work (if there is one) when he cannot purchase the type of upkeep he wants or needs.

Customers have varied needs and wants relating to upkeep. For example, the customer may want to enter his subscription or order for automatic upkeep of supplements (i.e., pocket part supplements, replacement pages, releases, inserts), advance sheets, replacement, revised, recompiled or split volumes, but he may want to be notified of and given the opportunity to order any additional, companion or related volumes, series or sets, new editions, or any related titles.

NOTE 1: Nothing in this section is meant to preclude a seller from offering to buyers the option of ordering and receiving all parts of upkeep on an automatic basis, including basic supplementation and all other extra parts of supplementation, or any other method of upkeep such as alternate year supplementation, as long as other requirements of this section are met.

NOTE 2: The purpose of this section is to furnish the seller and buyer with a clear understanding of what is being ordered. There has been dissension and confusion in the law-book industry as to what constitutes upkeep service and as to what the customer expects to receive or thinks he ordered under the upkeep provision, and as to which parts or units of the upkeep service the customer considers necessary or unnecessary for his particular requirements.

NOTE 3: Where a customer chooses to purchase individual parts of the upkeep service on a non-automatic basis [see paragraph (b) of this section], the total price for each part so ordered should not exceed the cost of such parts when ordered automatically [see Note 1 of this section], unless any increased charges are based upon the actual increased costs to the seller directly attributable to such sale and/or delivery.

NOTE 4: The Federal Trade Commission Act will be enforced in accordance with Section 3009 of the Postal Reorganization Act which designates that "(a) * * * the mailing of unordered merchandise or of communications prohibited by paragraph (c) of this section constitutes an unfair method of competition and an unfair trade practice. * * *

"(b) Any merchandise mailed in violation of paragraph (a) of this section, or within the exceptions contained therein, may be treated as a gift by the recipient, who shall have the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender. All such merchandise shall have attached to it a clear and conspicuous statement informing the recipient that he may treat the merchandise as a gift to him and has the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender.

"(c) No mailer of any merchandise mailed in violation of paragraph (a) of this section, or within the exceptions contained therein, shall mail to any recipient of such merchandise a bill for such merchandise or any dunning communications."

[Guide 14]

§ 256.15 Billing practices.

(a) Sellers of industry products should notify all customers in a clear and conspicuous manner: